

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
CERTIFIED FARMERS' MARKET ADVISORY COMMITTEE
Meeting Minutes
September 13, 2004
Torrance, California**

MEMBERS

Harry Brown-Hiegel
Russell Hall
Jim Russell
Gene Etheridge
Gail Hayden
Dennis Peitso
Greta Dunlap
Howell Tumlin
Mary Lou Weiss
Scott Hudson
Karol Jo Kappel
Phil McGrath, voting alternate

ALTERNATES MEMBERS

John Silveira
Doug Hayden
Pompea Smith
Jane Allen
Mary Hillebrecht

CDFA

Janice Price
Susan Shelton

INTERESTED PARTIES

John Young, Yolo Ag.
Commissioner's Office
Vidai Morga, PCFMA
Thomas Herrera, L.A. Ag.
Commissioner
Dale Whitney, Harbor Area CFM
Laura Avery, Santa Monica CFM
Louise Nelson Dyble, UCB
Brian Roach, Buena Tierra Farm

ITEM 1: ROLL CALL

Harry Brown-Hiegel called the meeting to order at 10:06 A.M. Janice Price called the roll and a quorum was established.

A. INTRODUCTION OF GUESTS

Introductions were made.

ITEM 2: APPROVAL OF JULY 12, 2004 MEETING MINUTES

The committee requested that the following changes be made to the July 12, 2004 meeting minutes:

- Strike "and that the motion was voted on and approved" from the corrections listed under Item 2, Approval of May 10, 2004 Meeting Minutes.
- Add "as well as by processing" after "...labeling, branding" to Item 4.n., Dr. Steven Blank – Speaker.

MOTION: Gail Hayden moved to approve the minutes as amended. Mary Lou Weiss seconded. The motion passed unanimously.

ITEM 3: APPROVAL OF AGENDA

Harry Brown-Hiegel asked that Item 5.e., A View From Behind the Table, be presented immediately following lunch regardless of where the committee is on the agenda.

Janice asked that "Appointment Announcement" be added to the agenda as Item 4.d.4.

MOTION: Mary Lou Weiss moved to approve the agenda as amended. Dennis Pietso seconded. The motion passed unanimously.

ITEM 4: REPORTS

A. CFM REMITTANCE FEE AND DELINQUENT MARKET REPORTS: 2nd - 4th QUARTERS, 2003 AND 1st & 2ND QUARTER, 2004 – JANICE PRICE

Janice Price announced that those markets listed on the 2003 delinquent reports and the first quarter 2004 delinquent report have had letters sent to their Agricultural Commissioner's Office asking that their market certificates not be renewed. A copy of that letter was sent to the market manager.

B. CDFA BUDGET REPORTS: JUNE AND JULY, 2004 – JANICE PRICE

Janice Price explained that the line item "Total Personal Services" in the year-to-date column on the June 2003-04 Budget Report is not a true number. It shows an amount of \$6,194.29; however, the salaries of those in the CFM Program have not yet been included. That number will increase to a minimum amount of approximately \$95,000. Janice will continue to include the 2003-04 Budget Report in the committee packets until those expenses are shown.

Howell Tumlin stated that he, and possibly other members of the committee, are unable to decipher the budget reports. He asked that Janice attach a cover memo on future reports explaining any areas of the budget that may be of interest/concern to the CFMAC.

C. CDFA 2ND QUARTER 2004 TASK REPORT – JANICE PRICE

Janice Price reported on the status of the enforcement action regarding the cherry farmer who is charged with selling cherries not of his own production. This producer was fined and his certificate was suspended for 18 months; however, he has appealed this decision. That appeal is currently underway. The cherry farmer's sales representative was also suspended from participating in CFM's, in any capacity, for 18 months. This suspension stands.

The committee discussed some other issues related to possible enforcement action and congratulated Janice on her hard work and diligence in this area.

D. NOTICE OF 15-DAY COMMENT PERIOD ON AMENDMENT OF ORIGINAL PROPOSED REGULATIONS

A notice was published on June 4, 2004, regarding the proposed changes to Sections 1392.2, 1392.4, and 1392.9. After reviewing the feedback gathered from the 15-day comment period, CDFA proposes some additional changes to these sections. The committee was asked to recommend adoption of these sections.

1. *SECTION 1392.2(t), DEFINITION OF SPROUTS*¹

~~“(t) Sprouts. Sprouts are germinated seeds, legumes and nuts such as, but not limited to, pumpkin seeds, peanuts, flax, soybeans and fenuGreek. For the purpose of practicing the agricultural arts to sell sprouts at a certified farmers’ market, a minimum of fifty percent of the seeds, legumes, or nuts, in any package or container offered or displayed for sale, must have sprouts that have emerged from the seed, legume or nut coat, husk, pericarp or other type of seed covering. Due to the various types or varieties of sprouts, there is no requirement for the length of the sprout and no set amount of time for the seeds to soak. No requirement for a minimum measurement of the sprout shall apply nor shall a minimum time of seed hydration be required. Certified producers may not sell sprouts as their own production resulting from the agricultural arts, if less than 50 percent of the seeds have sprouts that have emerged from the seed coat, husk, pericarp or other type of seed covering.”~~

2. *SECTION 1392.4(h), (i), and (j), CONDITIONS OF DIRECT MARKETING*

~~“(h) The operator of a certified farmers’ market shall, upon the request of an enforcement officer, provide a current valid certified farmers’ market certificate when operating a certified farmers’ market.~~

~~(ih) Anyone person selling organic products or representing products as organic at a certified farmers’ market shall conspicuously post at the point of sale a photocopy of their his or her current State of California organic registration and, if applicable, the documentation of his or her organic certification.~~

~~(i) Any person selling organic products or representing products as organic on behalf of another certified producer at a certified farmers’ market shall~~

¹ The original language appears in plain text.

The original proposal appears in strikeout for deletions.

The current proposal appears in double strikeout for deletions and double underscore for additions.

conspicuously post at the point of sale a photocopy of the represented certified producers' current State of California organic registration and, if applicable, documentation of the represented certified producers' organic certification.

(j) A certified producer shall not sell or represent sprouts as his or her own production resulting from practicing the agricultural arts if less than 50 percent of the seeds, legumes or nuts in any package or container have sprouts that have emerged from the seed, legume or nut coat, husk, pericarp or other type of covering."

3. *SECTION 1392.9(c) and (d), COMPLIANCE REQUIREMENTS FOR THE OPERATOR OF A CFM*

"(c) No person shall operate a certified farmers' market unless he or she has in his or her possession a current, valid certified farmers' market certificate issued by the county agricultural commissioner for that market.

(d) The operator of a certified farmers' market shall, upon the request of an enforcement officer, provide for review his or her current, valid certified farmers' market certificate at any time during the operation of a certified farmers' market."

MOTION: Jim Russell moved to have the chair, Harry Brown-Hiegel, on behalf of the CFMAC, write a letter to CDFA endorsing the above changes. Scott Hudson seconded. The motion passed unanimously.

4. *APPOINTMENT ANNOUNCEMENT*

Janice Price announced that Jim Eldon has become a member of the CFMAC to fill the Northern California certified producer seat that Jerry Gonce has recently vacated. Jim is an organic vegetable grower from Brooks, CA. Janice provided the committee members with Jim's phone number and email address.

E. *AGRICULTURAL COMMISSIONERS*

Scott Hudson reported that CACASA's Direct Marketing Subcommittee has developed a survey for the county commissioners to report what they are currently spending on the CFM program. After the surveys are returned CACASA will complete a cost analysis to determine the following:

- Current costs
- What the cost would be for enforcement of the full CFM program, as it currently stands
- What the cost would be for an audit based program

The next CACASA conference begins on November 1, 2004. As this is the same day as the next CFMAC meeting, Scott will try to attend CFMAC in the morning and CACASA in the afternoon.

F. LONG RANGE PLANNING SUBCOMMITTEE – JANE ALLEN, CHAIR

Jane Allen reported to the committee that a rough analysis of the data gathered from the surveys has been completed by UC Berkeley. If requested, Louise Dyble can provide this data to any of the committee members. At the November CFMAC meeting, Louise will be presenting the results of the analysis.

G. FINANCE SUBCOMMITTEE – SCOTT BEYLIK, CHAIR

No report at this time.

H. MARKET STANDARDS/MANAGER CERTIFICATION SUBCOMMITTEE -
HOWELL TUMLIN, CHAIR

No report at this time.

I. ENFORCEMENT/MATRIX SUBCOMMITTEE – SCOTT HUDSON, CHAIR

No report at this time.

J. NON-CERTIFIABLE AGRICULTURAL PRODUCTS SUBCOMMITTEE – JIM
RUSSELL, CHAIR

A teleconference meeting was held on August 23, 2004. The subcommittee discussed changes to section 1392.2 (t). Further business regarding this matter will be conducted under Item 5.d. of this agenda.

The subcommittee also discussed the Hall/Landon proposed regulatory changes and recommended that the document be forwarded to CFMAC for discussion. This proposal will also be discussed in more detail under Item 5.d. of this agenda.

K. POLICY AND PROCEDURES SUBCOMMITTEE – HOWELL TUMLIN, CHAIR

A teleconference meeting was held on August 10, 2004. The subcommittee discussed incorporating requirements of the Bagley-Keene Open Meeting Act into the Procedures for the CFMAC. Further business regarding this matter will be conducted under Item 5.c. on this agenda.

L. CHAIRMAN'S REPORT – HARRY BROWN-HIEGEL

Harry Brown-Hiegel commended the subcommittees for their work on the various issues and commented that it has helped to move the issues along in a timely manner. He also strongly suggested that individual members of the CFMAC should send letters of support to CDFA for the proposed changes to Sections 1392.2, 1392.4, and 1392.9

ITEM 5: COMMITTEE BUSINESS

A. PROPOSED CFMAC PROCEDURE AMENDMENT TO SECTION 1.6,
ELECTION OF OFFICERS – JANICE PRICE

For purposes of clarification, Janice Price, requested that changes be made to the CFMAC Procedures, Section 1.6, Election of Officers. The recommended changes read:

“Committee officers shall be elected for a term of one year commencing with the first meeting of the Committee of each calendar year. Any Committee member may hold more than one office, except that the chairperson shall hold only that office. In the event of an officer vacancy, the Committee will elect a voting member of the Committee to fill the remainder of the unexpired term.”

MOTION: Howell Tumlin moved to have this item placed on the agenda for the next CFMAC meeting so that a vote may be taken. Jim Russell seconded. Gail Hayden asked for a friendly amendment to change the last line to, “In the event of a vacancy of an officer, the Committee will elect...” This amendment was accepted and the motion passed unanimously.

B. PROPOSED CFMAC PROCEDURE AMENDMENT TO SECTION 1.7.1,
SUBCOMMITTEE QUORUM – JANICE PRICE

For purposes of clarification, Janice Price, requested that changes be made to the CFMAC Procedures, Section 1.7.1, Subcommittee Quorum. The committee did not agree with the recommended changes that were presented.

MOTION: Howell Tumlin moved to send the proposal back to the Policies and Procedures Subcommittee for rewrite and clarification. Jim Russell seconded. The motion passed unanimously.

C. CFMAC POLICY AND PROCEDURE AMENDMENTS TO INCORPORATE BAGLEY-KEENE OPEN MEETING ACT REQUIREMENTS – HOWELL TUMLIN

Howell Tumlin presented the committee with a copy of proposed revisions to the Procedures for the CFMAC, which includes excerpts from the Bagley-Keene Open Meeting Act.

MOTION: Howell Tumlin moved to have this item placed on the agenda for the next CFMAC meeting so that a vote may be taken. Jim Russell seconded. The motion passed unanimously.

A discussion ensued regarding these changes and other issues related to procedures. It was decided that the Policies and Procedures Subcommittee would look into some specific issues and place those items on the next agenda. They are:

- Rules regarding roll call votes during a regular committee meeting
- Rules regarding prohibition and/or allowance of secret ballots
- If Robert's Rules of Order address any of these issues

D. CONCEPT OF PROPOSED AMENDMENT OF REGULATIONS PERTAINING TO PROCESSED PRODUCTS

1. *CHANGES TO ARTICLE 6.5, DIRECT MARKETING – RUSTY HALL*

The Non-Certifiable Agriculture Product Subcommittee has discussed many issues relating to processed products in the CFM. To address these issues, Rusty Hall and Rick Landon have put together a proposal for extensive changes to the California Code of Regulations, Article 6.5. A copy of this proposal was passed out to the committee members.

Rusty explained that the main goal is to create fair, clear, and enforceable regulations. These proposals define and regulate agricultural products as

agricultural commodities (whole, part, or issue of plant, tree, vine, and/or animal) and farmstead foods (an edible processed product).

A discussion ensued regarding CACASA's ability to enforce the changes, how the Health Department and their regulations would interplay, etc.

MOTION: Jim Russell moved to have each of the subcommittees discuss these changes and then report their recommendations to the CFMAC at the next committee meeting. Rusty Hall seconded. The motion passed unanimously.

2. CHANGES TO PROPOSED SECTION 1392.2(t) – JIM RUSSELL

The CDFA Legal Office sent the proposed changes defining processed products, Section 1392.2(t), back to the committee with a few recommended changes. CDFA Legal determined that specifying "shelled nuts" is inconsistent and cannot be applied across the board. The changes they propose are as follows:

"...mechanical processing of an agricultural product, such as, but not limited to, drying or shelling, provided, however, that the seller has produced all of the ingredients contained in the product. ~~Except for seasoning on shelled nuts, the~~ The only exception to this production..."

A discussion ensued regarding the issues related to these changes, focusing on the phrase "except for seasoning". It was reasoned that seasonings must be kept in so that the flavored nuts currently being sold in CFM's can continue to be sold. It was also argued that leaving seasoning is brings up the old issues related to seasonings vs. flavorings.

MOTION: Jim Russell moved to accept the Legal Office's changes, with the exception of keeping the phrase "except for seasoning". Howell Tumlin seconded. A roll call vote was requested. Phil McGrath, Mary Lou Weiss, Karol Jo Kappel, Rusty Hall, and Greta Dunlap voted nay. Howell Tumlin, Scott Hudson, Dennis Peitso, Jim Russell, Gene Etheridge, Gail Hayden, and Harry Brown-Hiegel voted yea. The motion passed with seven for and five against.

E. A VIEW FROM BEHIND THE TABLE PRESENTATION – BRIAN ROACH

Brian Roach, a CFM certified producer and an organic producer, from Buena Tierra Farm, came to speak to the committee. Mr. Roach expressed his concerns regarding issues related to non-agricultural vendors, enforcement, non-uniformity

in market sales reporting, consequences of "whistle blowing", lack of knowledge and access to policies and procedures, etc.

Howell Tumlin thanked Mr. Roach for bringing his concerns to the committee. Howell explained that many of these issues are ones that are ongoing concerns and invited Mr. Roach to help the committee by suggesting recommendations as possible solutions. Harry Brown-Hiegel suggested that Mr. Roach may be interested in joining one/some of the subcommittees. His name will be added to the interested parties mailing list.

- F. SEEKING CFMAC LETTER OF SUPPORT REGARDING REGULATION AMENDMENT – JANICE PRICE
1. *SECTION 1392.2(t), DEFINITION OF SPROUTS*
 2. *SECTION 1392.4(h), (i), and (j), CONDITIONS OF DIRECT MARKETING*
 3. *SECTION 1392.9(c) and (d), COMPLIANCE REQUIREMENTS FOR THE OPERATOR OF A CFM*

This item was voted on under Item 4.d. and discussed under Item 4.l. No further discussion was needed.

- G. INTERIM SOLUTION FOR CFM SALES OF NON-CERTIFIABLE AGRICULTURE PRODUCTS – RUSTY HALL

This item was not presented or discussed at this time.

ITEM 6: NEW BUSINESS - DISCUSSION ONLY

Gail Hayden requested that the definition of the area designated outside of the CFM and the issue of re-selling be placed on the agenda for the next meeting.

ITEM 7: MEMBER ROUNDTALBE DISCUSSION – HARRY BROWN-HIEGEL

Greta Dunlap suggested that if there is an explanatory memo attached to future budget reports, as discussed under Item 4.b., that a committee member, rather than Janice Price, should do this.

Janice Price stated a strong desire to promote adequate funding for enforcement. She recounted a recent experience on an enforcement issue that had to be dropped as the county was unable to help in the matter and Janice's schedule did not allow for the man-hours required.

**ITEM 8: NEXT MEETING NOVEMBER 8, 2004 – SACRAMENTO/NEW AGENDA
ITEMS – HARRY BROWN-HIEGEL**

The next meeting will be November 8, 2004 in Sacramento. It was decided that the following meeting would be held on January 10, 2004 in Torrance.

ITEM 9: ADJOURNMENT

The meeting adjourned at 3:06 P.M.

Respectfully submitted by:

Janice Price, Supervisor
Certified Farmers' Market Program
Inspection and Compliance
Inspection Services